

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WESTCODE, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
RBE ELECTRONICS, INC.	:	NO. 99-3004

MEMORANDUM AND ORDER

HUTTON, J.

February 1, 2000

Presently before the Court is Defendant's Motion to Dismiss, or, Alternatively, Transfer Venue to the District of Minnesota (Docket No. 4), and Plaintiff's Opposition thereto (Docket No. 8). For the following reasons, Defendant's Motion is **DENIED**.

I. BACKGROUND

Plaintiff Westcode, Inc., a Pennsylvania Corporation, manufactures and supplies air conditioning units ("HVAC") for train and subway cars. Defendant RBE Electronics, Inc., a Minnesota Corporation, contracted with Plaintiff to supply current sensor monitors which were to be incorporated into Plaintiff's HVAC units. This action arises out of a breach of contract claim caused by Defendant's alleged supply of defective units.

Following considerable communications and negotiations between the parties, Plaintiff submitted a purchase order for prototype current sensor monitors on or about January 31, 1994. Defendant responded to this request by letter, dated February 7,

1994, advising Plaintiff that Defendant could not supply said prototypes unless certain ordering minimums were satisfied. Several months later Plaintiff submitted another purchase order for 1,937 current sensor monitors, which were to conform to Plaintiff's specifications. Delivery of said units commenced on or about December 14, 1994, with continued deliveries scheduled well into 1998. In addition, Plaintiff also purchased approximately six hundred voltage monitors from Defendant.

Unit shipments were subject to inspection at Plaintiff's Malvern, Pennsylvania facility. Any non-conforming units would then be shipped back to Defendant. In or about September, 1998, Plaintiff concluded that Defendant's components could not withstand the harsh environmental conditions of the subway cars in which they were used. Plaintiff claims that Defendant failed to replace, cure, or repair said defects. As a result, Plaintiff filed a complaint in the United States District Court for the Eastern District of Pennsylvania. Defendant now objects on the basis of jurisdiction and venue.

II. DISCUSSION

A. Motions to Dismiss

When a defendant raises a defense of lack of personal jurisdiction, the plaintiff then bears the burden to come forward with sufficient facts to establish that jurisdiction is in fact proper. Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d

1217, 1223 (3d Cir. 1992). The plaintiff must produce "sworn affidavits or other competent evidence," since a Rule 12(b)(2) motion "requires resolution of factual issues outside the pleadings" Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 67 n.9 (3d Cir. 1984). For the purposes of the motion, the court must accept as true the plaintiff's version of the facts, and draw all inferences from the pleadings, affidavits, and exhibits in the plaintiff's favor. DiMark Mktg., Inc. v. Louisiana Health Serv. & Indem. Co., 913 F. Supp. 402, 405 (E.D. Pa. 1996); In Re Arthur Treacher's Franchisee Litigation, 92 F.R.D. 398, 409-10 (E.D. Pa. 1981).

Under Federal Rule of Civil Procedure 4(e), this Court may exercise personal jurisdiction over non-resident defendants to the extent permitted by Pennsylvania's long-arm statute. Pennsylvania exercises jurisdiction over non-residents to the fullest extent allowed under the Due Process Clause of the Fourteenth Amendment of the Constitution. See 42 Pa. Cons. Stat. Ann. § 5322(b). The constitutional limitations on the exercise of personal jurisdiction differ depending upon whether a court seeks to exercise general or specific jurisdiction over a non-resident defendant. See Mellon, 960 F.2d at 1221. General jurisdiction permits a court to exercise personal jurisdiction over a non-resident for non-forum related activities when the defendant has engaged in "systematic and continuous" activities in the forum state. See Helicopteros

Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-16, 104 S. Ct. 1868, 80 L. Ed.2d 404 (1984). In the absence of general jurisdiction, specific jurisdiction permits a court to exercise personal jurisdiction over a non-resident defendant for forum-related activities where the "relationship between the defendant and the forum falls within the 'minimum contacts' framework" of International Shoe Co. v. Washington, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945), and its progeny. Mellon, 960 F.2d at 1221.

1. Specific Jurisdiction

The Plaintiff in this case first asserts a claim of specific jurisdiction over the Defendant. A court's inquiry as to whether it has specific jurisdiction over a defendant starts with the Pennsylvania long-arm statute, which provides in pertinent part that "[a] tribunal of this Commonwealth may exercise [specific] personal jurisdiction over a person . . . who acts directly or by an agent . . . (1) Transacting any business in this Commonwealth."¹ 42 Pa. Cons. Stat. Ann. § 5322(a). The statute permits the

¹ "Transacting business" is the doing of a single act or series of acts within the Commonwealth "for the purpose of thereby realizing pecuniary benefits or otherwise accomplishing an object." See 42 Pa. Cons. Stat. Ann. § 5322(a)(1)(i)-(ii). "Transacting business" is further defined as "[t]he shipping of merchandise directly or indirectly into or through this Commonwealth." See § 5322(a)(1)(iii). As Plaintiff's cause of action arises out of goods sold to a Pennsylvania Corporation that were at least "indirectly" shipped into the Commonwealth by Defendant, this matter falls within the scope of Pennsylvania's long-arm statute. Further, Plaintiff's claims of misrepresentation and breach of warranty arguably fall within the scope of actions "[c]ausing harm or tortious injury in this Commonwealth by an act or omission outside this Commonwealth." See § 5322(a)(4).

exercise of jurisdiction "based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." § 5322(b). Under the Due Process Clause, a court can exercise specific jurisdiction over a defendant who has purposefully established "minimum contacts" in the forum state such that it "should reasonably anticipate being haled into court there." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474, 105 S. Ct. 2174, 85 L. Ed.2d 528 (1985) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945) and World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)).

"Specific jurisdiction is invoked when the cause of action arises from the defendant's forum related activities . . . 'such that the defendant should reasonably anticipate being haled into court there.'" Verotex Certainteed Corp. v. Consolidated Fiber Glass Prods. Co., 75 F.3d 147, 151 (3d Cir. 1996) (citations omitted). To establish specific jurisdiction, "the plaintiff must show that the defendant has constitutionally sufficient 'minimum contacts' with the forum." IMO Industries, Inc. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998). In applying the minimum contacts standard, it is clear that a "defendant will not be haled into a jurisdiction solely as a result of 'random,' fortuitous,' or 'attenuated' contacts." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed.2d 528 (1985). Rather, the

plaintiff must establish that the defendant "purposefully availed itself" of the privilege of conducting activities within the forum. Hanson v. Denckla, 357 U.S. 235, 253, 78 S. Ct. 1228, 2 L. Ed.2d 1283 (1958).

Nevertheless, even if "purposeful availment" is established, the Court must consider whether the exercise of personal jurisdiction would comport with the notion of "fair play and substantial justice." See Burger King, 471 U.S. at 476, 105 S. Ct. at 2184. In making this determination, the Court considers (1) the burden on the defendant; (2) the plaintiff's interests in obtaining convenient and effective relief; (3) the forum state's interest in adjudicating the dispute; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversies; and (5) the shared interests of the states in furthering fundamental substantive social policies. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292, 100 S. Ct. 559, 564, 62 L. Ed.2d 490 (1980). It is the defendant's burden to present a compelling set of circumstances which would render jurisdiction unreasonable. See Burger King, 471 U.S. at 477, 105 S. Ct. at 2184.

2. Specific Jurisdiction Analysis

"The mere existence of a contract between the non-resident defendant and the resident plaintiff does not, by itself, establish personal jurisdiction" Superior Precast v. Proto Constr.

and Dev. Corp., No. CIV.A.99-1893, 1999 WL 455594, at *3 (E.D. Pa. July 6, 1999) (quoting AMP Inc. v. Methode Electronics Inc., 823 F. Supp. 259, 264 (M.D. Pa. 1993)). Rather, "[p]ersonal jurisdiction is a fact-specific inquiry. The focus is on the relationship among the defendant, the forum state and the litigation." AMP, 823 F. Supp. at 262.

In considering the facts surrounding this case, the Court finds that Defendant has engaged in sufficient contacts with the forum state of Pennsylvania to justify a finding of specific jurisdiction. Plaintiff has submitted an affidavit which states that Defendant facilitated the shipment of almost two thousand (2,000) sensor monitors to Plaintiff's Malvern, Pennsylvania facility. These shipments ranged from one to six pieces and were the result of over 30 to 40 communications with Defendant, consisting of telephonic, telefax, and mail communications. (See Pl.'s Aff. of Gallagher ¶¶ 15-16). Said business relationship began in February, 1993, and continued until June 1998. (See Def.'s Aff. of Ernst ¶¶ 13, 18).

Given these facts, Defendant's contact with the forum were far from isolated or attenuated. Rather, Plaintiff and Defendant were engaged in a substantive business relationship spanning several years. In this context, Defendant admits to visiting Plaintiff's place of business on at least one occasion for a "courtesy call," although the exact date of this visit is unknown. (See Def.'s Aff.

of Flesher ¶ 3). Drawing all inferences in Plaintiff's favor, such a visit was presumably for the purpose of solidifying or enhancing the Parties' existing business relationship. Further, a review of the documents submitted by Defendant surrounding its business relationship with Plaintiff clearly evidence a deliberate and ongoing contractual relationship with a Pennsylvania Corporation.

Plaintiff's January 28, 1994, purchase order clearly states that shipments are to be received for "inspection" in Malvern, Pennsylvania, pursuant to a delivery schedule spanning into 1998. (See Purchase Order, dated Jan. 28, 1994). Plaintiff also states that an additional purchase order was submitted several months later which required shipment of 1,937 sensors between December 14, 1994 and January 1, 1998; although a copy of this purchase order is not included in Plaintiff's papers. (See Pl.'s Aff. of Gallagher ¶ 13). Nevertheless, it is undisputed that substantial shipments of sensors were made.

In addition, a February 7, 1994, letter from Defendant clearly evidences that the Parties' relations went beyond simply ordering a generic product from a non-resident seller. To the contrary, Defendant's letter requests Plaintiff to furnish drawings and specifications so that engineering could be completed. (See Letter of Flesher, dated Feb. 7, 1994).

Clearly, the parties were engaged in a substantial business

relationship going beyond an isolated order of a generic product. In considering a motion to dismiss for lack of jurisdiction, the Court is required to accept Plaintiff's version of the events as true and draw all reasonable inferences. See DiMark Mktg., Inc., 913 F. Supp. at 405. In this context, the Court finds that Plaintiff's purchase from Defendant was the result of considerable communication between the parties, both before and after January 28, 1994, and any subsequent purchase order. (See Pl.'s Aff. of Gallagher ¶¶ 15; see also Def.'s Aff. of Flesher ¶ 3).

Further, Defendant purposefully availed itself of the privilege of doing business in Pennsylvania when it entered a long-term contractual relationship to provide Plaintiff with the required sensors. The resulting agreement was certainly the result of negotiations, and not that of a passive seller as Defendant maintains. In support of this conclusion the Court looks to a December 30, 1993, communication where Defendant submitted for Plaintiff's consideration, an informal quote which offered two options; either a one-year contract, or a multi-year requirements contract. (See RBE Quote, dated Dec. 30, 1993). Said quote, sufficiently evidences that the resulting agreement was not of such a one sided nature as Defendant would not have "reasonably anticipate being haled into court" in Pennsylvania.

As a result of the foregoing, it is evident that Defendant has established sufficient "minimum contacts" with Pennsylvania as to

be subject to specific jurisdiction surround the alleged breach of the parties' agreement. Nevertheless, Defendant argues that such exercise of jurisdiction does not comport with the notion of "fair play and substantial justice" because it will impose a substantial financial burden.

Employing the standard set out in Burger King, the "burden on the defendant" is only one of several factor's to be considered. See 471 U.S. at 477. Even accepting as true that litigation in Pennsylvania would present a financial hardship upon Defendant, this alone is not sufficient to decline the exercise of constitutionally permissible jurisdiction. See Mesalic v. Fiberfloat Corp., 897 F.2d 696, 701 (3d Cir. 1990) (finding that the transporting of witnesses and documents from Florida to New Jersey did not impose an unfair financial burden; rather such consideration may be better suited for a motion to change venue).

First, Plaintiff has a clear interest in obtaining relief from Defendant's alleged breach of contract. There is no evidence that Defendant's interest outweighs that of the Plaintiff. Second, Plaintiff is a Pennsylvania Corporation, thus it cannot be disputed that Pennsylvania has a substantial interest in protecting its citizens. Third, there is no evidence that the resolution of this matter would be more efficient in another forum. Rather, this is a simple breach of contract and warranty case, whereby Plaintiff claims injury resulting for an alleged breach that has caused

injury to a Pennsylvania Corporation. Fourth, Defendant presents no argument that the exercise of jurisdiction would fail to further any shared substantive social policies.

Consequently, Defendant has failed to present the Court with compelling circumstances that would support a decision to decline personal jurisdiction despite the existence of "minimum contacts." As such, the exercise of "specific jurisdiction" does not offend the notion of "fair play and substantial justice."

3. General Jurisdiction Based Upon an Internet Presence

A corporation or individual is not subject to general jurisdiction in a foreign forum simply by virtue of an Internet presence. The leading District Court case within the Third Circuit discussing the nature of jurisdiction predicated upon the presence of an Internet Web site is Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997).

In Zippo the court concluded that the propriety of jurisdiction is based upon a sliding scale whereas "the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet." Id. at 1124. In so concluding the court ascertained three distinct types of Internet scenarios; (1) where the defendant clearly does business over the Internet; (2) middle-ground situations where a user interacts with a Web site through an exchange of information, requiring the determination of jurisdiction to be predicated upon the level of interactivity and the commercial nature of the exchange of information; and (3) where the defendant merely posts

information on a Web site that is little more than a passive display of information. Id. This sliding scale approach has also been adopted by several courts in this District. See Morantz v. Hang & Shine Ultrasonics, Inc., No. CIV.A.99-2640, 1999 WL 1240949, at *1 (E.D. Pa. Dec. 20, 1999) (discussing in great detail Internet based jurisdictional issues). See also Resnick v. Manfredy, 52 F. Supp.2d 462, 466-67 (E.D. Pa. 1999); Barrett v. Catacombs Press, 44 F. Supp.2d 717, 724-25 (E.D. Pa. 1999).

4. General Jurisdiction Analysis

As the Court has concluded that "specific jurisdiction" exists over Defendant, the consideration of "general jurisdiction" is somewhat unnecessary. Nevertheless, upon review of Plaintiff's general jurisdiction argument it is quite clear that a showing of "systematic and continuous" contacts with Pennsylvania is lacking when premised only upon Defendant's relatively passive internet presence.

Upon review of Plaintiff's materials exhibiting Defendant's Web site, it appears that such site is little more than a promotional or informational resource. Employing the Zippo standard, Defendant's site appears to be a "Type 3" entity, whereby information is passively displayed. This is especially true given that no purchases may be executed online; rather they must be accomplished through traditional means.

Despite the lack of "electronic commerce," Plaintiff contends that Defendant's site is highly interactive because of the existence of "hyperlinks," "e-mail addresses," and a "click-wrap"² agreement. The Court finds that Plaintiff simply misunderstands the nature of the Internet and the character of Defendant's Web site. Defendant's site is in reality no different than the thousands of other corporate and personal Web site which simply seek to provide information to interested parties. The site does not seek to market specifically to Pennsylvania, nor has Plaintiff shown that a substantial number of Pennsylvania citizens have accessed the site.

To premise "general jurisdiction" on such minimal contacts with a forum, without engaging in "electronic commerce," or a showing of intentional "systematic and continuous" contact with the forum, would place unrealistic, and in all likelihood, unconstitutional, burdens upon Internet entities.

Furthermore, even accepting that Defendant's Web site is sufficiently interactive to become a "Type 2" situation, such interactivity would not rise to the level of commercial activity justifying "general jurisdiction." As discussed, no purchase may be transacted through the Web site, and the only apparent

² What Plaintiff terms a "click-wrap" agreement is nothing more than an acknowledgment of the acceptance of the terms and conditions for use of Defendant's Web site. Said agreement bears no relationship to the sale of goods. Accepting that such an agreement is enforceable, to hold Defendant subject to "general jurisdiction" in essentially every State based upon such an attenuated contact would clearly violate all notions of "fair play and substantial justice."

contractual relationship which could arise during the use of the site is through the "terms of use" provision; which governs the use of information contained on the site, in addition to various disclaimers. Thus, although Defendant's Web site may contain interactive aspects, such innocuous interactivity has not been shown by Plaintiff to constitute "systematic and continuous" activity within Pennsylvania. See, e.g., Barrett, 44 F. Supp.2d at 729 (finding that in an Internet case, plaintiff must show defendant purposely availed itself of activity in the forum state).

B. Venue

In addition to personal jurisdiction objections, Defendant also asserts that venue is not proper in the Eastern District of Pennsylvania, and that the case should be dismissed, or in the alternative, transferred to the District of Minnesota. See 28 U.S.C. § 1406(a). Plaintiff contends, however, that venue is proper under 28 U.S.C. § 1391(a)(2), asserting that the Eastern District of Pennsylvania is "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." As the Third Circuit has discussed, events or omissions must be more than tangentially connected to qualify as substantial under § 1391(a)(2). See Cottman Transmission Sys., Inc., v. Martino, 36 F.3d 291 (3d Cir. 1994). "Substantiality is intended to preserve the element of fairness so that a defendant is not haled into a remote district having no real relationship to the

dispute." Id. at 294. Rather than looking at a defendant's "contacts" with a particular district, the test for determining venue is the location of those "events or omissions giving rise to the claim." Id. The determination of whether an act or omission is substantial turns on the nature of the dispute. Id. at 295.

In this context, many of the factors that the Court analyze in determining Defendant's "minimum contacts" with Pennsylvania are also relevant to the determination that venue is proper in this District. See BABN Technologies Corp. v. Bruno, 25 F. Supp.2d 593, 598-99 (E.D. Pa. 1998). As previously addressed in the discussion of "specific jurisdiction," the Court has already determined that Defendant had significant contacts with Pennsylvania surrounding the subject matter of this litigation. Further, Plaintiff's claims are such that they allege injury to a Pennsylvania Corporation as a result of a breach of contract and warranty. Accordingly, the Court finds that Plaintiff has sufficiently alleged that a substantial part of the events giving rise to its claims occurred within Pennsylvania. See BABN Technologies, 25 F. Supp.2d at 596 (holding venue requirements satisfied by facts establishing personal jurisdiction).

C. Transfer of Venue

Defendant argues in the alternative that this action should be transferred to the District of Minnesota. See 28 U.S.C. § 1404(a). Section 1404(a) provides: "[f]or the convenience of parties and

witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The decision whether to transfer an action pursuant to § 1404(a) rests in the Court's discretion and is reviewed for abuse of discretion. See Lony v. E.I. DuPont de Nemours & Co., 886 F.2d 628, 631-32 (3d Cir. 1989) (decision to grant or deny forum non convenience motion is within sound discretion of trial court). The party seeking transfer of venue bears the burden of establishing that transfer is warranted and must submit "adequate data of record" to facilitate the court's analysis. Ricoh Co. v. Honeywell, Inc., 817 F. Supp. 473, 480 (D.N.J. 1993). Before transferring venue, the district court must articulate specific reasons for its decision. Lacey v. Cessna Aircraft Co., 862 F.2d 38 (3d Cir. 1988); Ricoh, 817 F. Supp. at 480.

The Court's analysis under Section 1404(a) is flexible and turns on the particular facts of the case. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29-30, 108 S. Ct. 2239, 2243-44, 101 L. Ed.2d 22 (1988). In Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S. Ct. 839, 91 L. Ed. 1055 (1947), the Supreme Court listed several factors that guide the Court's decision-making in this area. These factors fall into two categories: (1) the private interests of the litigants; and (2) the public interest in the fair and efficient

administration of justice.³ Gulf Oil, 330 U.S. at 508-509, 67 S. Ct. at 843.

The Supreme Court articulated these factors with respect to a motion to dismiss for forum non convenience. Nevertheless, courts routinely look to the Gulf Oil factors in deciding a motion to transfer venue under 1404(a). See, e.g., Ricoh, 817 F. Supp. at 479-88. Because transfer of venue is less drastic than dismissal, however, district courts have broader discretion to transfer venue than to dismiss on forum non convenience grounds. Norwood v. Kirkpatrick, 349 U.S. 29, 32, 75 S. Ct. 544, 546, 99 L. Ed. 789 (1955); All States Freight, Inc. v. Modarelli, 196 F.2d 1010, 1011 (3d Cir. 1952); Ricoh, 817 F. Supp. at 479.

1. Transfer of Venue Analysis

Applying these principles to the instant case, the Court cannot find that the Defendant has met its burden of showing that the transfer of this case to the District of Minnesota will best serve the interests of convenience and justice. Although

³ The private interest factors are: (1) plaintiff's choice of forum; (2) the relative ease of access to sources of proof; (3) the availability and cost of compulsory process for unwilling witnesses; (4) obstacles to a fair trial; (5) the possibility of viewing the premises, if viewing the premises would be appropriate to the action; and (6) all other factors relating to the expeditious and efficient adjudication of the dispute. Gulf Oil, 330 U.S. at 508-09, 67 S. Ct. at 843. The public interest factors are: (1) the relative backlog and other administrative difficulties in the two jurisdictions; (2) the fairness of placing the burdens of jury duty on the citizens of the state with the greater interest in the dispute; (3) the local interest in adjudicating localized disputes; and (4) the appropriateness of having the jurisdiction whose law will govern adjudicate the dispute in order to avoid difficult problems in conflicts of laws. Id.

Defendant, without citing any authority, states that the parties' agreement is governed by Minnesota law, such a conclusion is brought into question by Plaintiff's affidavit. Said affidavit states that Plaintiff's purchase order contains a Pennsylvania choice of law provision. (See Pl.'s Aff. of Gallagher ¶ 14). Although, the Court is not in possession of the physical document evidencing such provision, at a minimum Plaintiff's affidavit provides sufficient evidence to concluded that Defendant has not clearly established that Minnesota has a substantial interest in the resolution of this matter though the application of its laws. Moreover, Pennsylvania has an interest in providing a Pennsylvania Corporation with a Pennsylvania forum for redressing injuries inflicted by out-of-state actors. See Burger King, 471 U.S. at 473-74 ("where individuals 'purposefully derive benefit' from their interstate activities,(citations omitted), it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities").

Defendant also argues that this action should be transferred because documentary evidence is located Minnesota. Keeping the action in Pennsylvania, however, does not affect counsel's access to this evidence. A review of Plaintiff's complaint clearly shows that this is a claim for breach of contract and warranty, not a complex matter which will likely require the Court to become intimately familiar with Defendant's Minnesota facilities or

manufacturing processes.

Aside from the above mentioned concerns, Defendant asserts that this matter must be transferred because litigation in Pennsylvania would impose a financial hardship through increased costs in obtaining witnesses that are necessary to its defense. Defendant, however, points to no authority which would support a conclusion that such financial concerns alone justifies a transfer of venue. See Aquatic Amusement Associates v. Walt Disney World, 734 F. Supp. 54, 57 (N.D.N.Y. 1990) (explaining that the convenience of non-party witnesses is accorded greater weight in a § 1404(a) analysis than party witnesses).

While financial concerns are obviously relevant to a consideration of venue transfer, Defendant fails to recognize that the financial arguments it puts forth equally apply to the Plaintiff. Should the Court transfer venue, Plaintiff will incur increased litigation costs through a resolution of this matter in a Minnesota forum. This action is not one with attenuated contacts to Pennsylvania, rather, Plaintiff's complaint alleges contractual injury to a Pennsylvania Corporation. Clearly, such a substantial connection to Pennsylvania evidences a strong localized interest in adjudicating this dispute.

Consequently, Defendant has failed to persuade the Court that litigation in Pennsylvania imposes a barrier to a fair and equitable resolution, or that Minnesota's interest in resolving this dispute is greater than that of Plaintiff's chosen forum. As

the balance of convenience does not weight heavily in Defendant's favor, the Court declines to transfer this case to the District of Minnesota.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WESTCODE, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
RBE ELECTRONICS, INC.	:	NO. 99-3004

O R D E R

AND NOW, this 1st day of February, 2000, upon consideration of the Defendant's Motions to Dismiss, or, Alternatively, Transfer to the District of Minnesota (Docket Nos. 4), and Plaintiff's Opposition thereto (Docket No. 8), IT IS HEREBY ORDERED that the Defendant's Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.